

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 287 , Disciplinary Docket
: No. 3 – Supreme Court
:
: Nos. 158 DB 1996 & 105 DB 1998
JOSEPH ROBERT RYDZEWSKI : Disciplinary Board
:
: Attorney Registration No. 17652
:
PETITION FOR REINSTATEMENT : (Lackawanna County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 218(c)(5) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania submits its findings and recommendations to your Honorable Court with respect to the above--captioned Petition for Reinstatement.

I. HISTORY OF PROCEEDINGS

On July 29, 2002, Petitioner, Joseph R. Rydzewski, filed a Petition for Reinstatement to the Bar of Pennsylvania. Petitioner was Disbarred on Consent by Order of the Supreme Court of Pennsylvania dated February 24, 1999, retroactive to December 18, 1996.

A reinstatement hearing was held on February 10, 2003, before Hearing Committee 3.02 comprised of Chair Karen M. Balaban, Esquire, and Members Samuel Leach Andes, Esquire, and Thomas C. Clark, Esquire. Samuel C. Stretton, Esquire, represented Petitioner at the hearing. Petitioner testified on his own behalf and presented the testimony of nine character witnesses.

The Hearing Committee filed a Report on July 11, 2003 and recommended that the Petition for Reinstatement be granted.

This matter was adjudicated by the Disciplinary Board at the meeting of August 26, 2003.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner was born in 1948 and was admitted to practice law in the Commonwealth in 1973. He currently resides at 125 Belmont Avenue, Clarks Green, PA 18411.

2. Petitioner was Disbarred on Consent by Order of the Supreme Court of Pennsylvania dated February 24, 1999, retroactive to December 18, 1996.

3. From April 1992 until January 1996, while a senior shareholder at the Scranton law firm of O'Malley & Harris, P.C., Petitioner engaged in the theft of over

\$157,000, of which \$63,000 was from various clients and the remainder from the law firm for fraudulent expense reimbursements.

4. On October 22, 1996, Petitioner was convicted in state court under a guilty plea to Theft by Unlawful Taking in violation of 18 Pa.C.S. §3921(a), a felony of the third degree.

5. Petitioner served two months in the Lackawanna County Prison, seven months in home detention, and fifteen months on parole.

6. On April 29, 1997, Petitioner entered a plea agreement pleading guilty in federal court to one count of mail fraud under 18 U.S.C. §1341. Petitioner served five months of a seven month sentence in federal prison, six weeks in a halfway house and two years on supervised release.

7. Petitioner's explanation of his underlying misconduct was that he was the rainmaker in the law firm and felt he was not being fairly compensated but was unsuccessful in negotiating more favorable terms with his firm. As a result, he used his firm expense account for his household bills and personal expenses, which the firm reimbursed him by either issuing payment to him or directly to creditors to pay for utility bills and the like. His misconduct was discovered by the firm during an audit.

8. Petitioner paid back all monies that were due and owing to his firm and the firm's clients; has complied with all terms and conditions of the state incarceration and

probation, and all terms and conditions of the federal incarceration and supervised release; and all court fines and costs have been paid.

9. After Petitioner was released from incarceration, he worked for several months as a paralegal for his wife's uncle, Attorney Irwin Schneider, in Scranton.

10. Since May 1998, Petitioner has worked for Attorney John Spall, in Hawley, searching titles and preparing title reports, reviewing real estate settlement statements, preparing real estate paperwork, and conducting general research.

11. Petitioner has not held himself out as a practicing lawyer since his temporary suspension and disbarment.

12. Petitioner has remained current in the law by reading various legal documents as well as legal and real estate trade periodicals.

13. Petitioner has fulfilled the Continuing Legal Education course requirements necessary to file for reinstatement.

14. Petitioner participates in the community by doing volunteer work for the Jewish Community Center, the Lupus Walk, B'Nai Brith Board, and his local fire company.

15. Subsequent to his misconduct, Petitioner began treatment with Frank Mrykalo, a licensed psychologist. His visits with Mr. Mrykalo occur approximately every two weeks.

16. Petitioner has learned a great deal from his therapeutic sessions with Mr. Mrykalo, such as dealing with problems head on and controlling his anger.

17. Petitioner expressed sincere remorse for his misconduct, not only for the embarrassment to members of the bar, but to the members of his former law firm.

18. If reinstated, Petitioner intends to continue working with Attorney Spall in the area of real estate law.

19. Eight character witnesses testified on Petitioner's behalf. These witnesses included attorneys and members of Petitioner's community. The witnesses confirmed that Petitioner has an excellent reputation as a truthful and honest person and has displayed great remorse and acceptance of responsibility for his actions.

20. John Spall is an attorney and Petitioner's current employer. He testified he first met Petitioner when they were college students and has maintained a friendship with him over the years. Attorney Spall employs Petitioner full time as a paralegal and finds him to be very knowledgeable in the law.

21. Petitioner's therapist is Frank M. Mrykalo, a licensed psychologist. Petitioner began treatment with Mr. Mrykalo in 1995. Mr. Myrkalo diagnosed Petitioner as suffering from a mild depression and narcissistic tendencies.

22. Mr. Myrkalo testified he has helped Petitioner become aware of his problems and how to deal with them. Mr. Myrkalo sees no emotional or psychological reasons that would impair Petitioner's ability to function as a lawyer.

III. CONCLUSIONS OF LAW

1. The misconduct for which Petitioner was disbarred is not so egregious as to preclude immediate consideration of his Petition for Reinstatement.
2. Petitioner has demonstrated, with clear and convincing evidence, that he possesses the moral qualifications, competency and learning in the law necessary to practice law in the Commonwealth of Pennsylvania.
3. Petitioner's resumption of the practice of law will not be detrimental to the integrity of the bar nor subversive of the interest of the public.

IV. DISCUSSION

This matter comes before the Disciplinary Board on a Petition for Reinstatement filed by Joseph R. Rydzewski. Petitioner was Disbarred on Consent by Order of the Supreme Court dated February 24, 1999, retroactive to December 18, 1996.

Petitioner's request for reinstatement to the bar after disbarment is initially governed by the standard set forth by the Supreme Court of Pennsylvania in Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). As a threshold matter, the Board

must determine whether Petitioner has demonstrated that his breach of trust was not so egregious that it precludes him from reinstatement.

While a senior shareholder at his law firm, Petitioner engaged in the theft of over \$157,000, of which \$63,000 was from various clients and the remainder from his law firm for fraudulent expense reimbursements. Petitioner pleaded guilty to theft by unlawful taking in state court and pleaded guilty in federal court to one count of mail fraud. He served jail time in the Lackawanna County Prison for the state conviction and five months in a federal prison for the mail fraud conviction. Petitioner made full restitution to the firm and the firm's clients in October 1996, prior to his guilty plea in state court.

Upon review of the underlying offense and the case law, the Board concludes that the misconduct is not so egregious as to preclude Petitioner from reinstatement. The Court has previously found that conversion of client or law firm funds, while an extremely serious ethical offense, does not prohibit an attorney from reinstatement. In re Perrone, 777 A.2d 413 (Pa. 2001), In re Costigan, 664 A.2d 518 (Pa. 1995), In re Anonymous No. 24 DB 84, 14 Pa. D. & C. 4th 235 (1991).

Having concluded that Petitioner's misconduct is not so egregious as to preclude the Board from considering his Petition for Reinstatement, the Board must now determine whether Petitioner has met his burden of proving by clear and convincing evidence that his resumption of the practice of law at this time would not have a detrimental impact on the integrity and standing of the bar, the administration of justice, or the public

interest and that he has the moral qualifications, competency and learning in the law required for admission to practice law in Pennsylvania. Pa.R.D.E. 218(c)(3)(i). In order to make this determination, the Board must consider the amount of time that has passed since Petitioner was disbarred, as well as his efforts at rehabilitation. In re Verlin, 731 A.2d 600 (Pa. 1999).

Petitioner has been disbarred for approximately seven years. This is a sufficient length of time to dissipate the taint of Petitioner's misconduct on the integrity of the bar and the public interest, as during that time period Petitioner has worked to rehabilitate himself. Petitioner began therapy in 1995 to seek help and understanding as to why he committed his acts of misconduct. He still attends therapy sessions on a twice monthly basis and finds them to be very helpful. Petitioner maintained his involvement in community activities, such as B'Nai Brith, the Lupus Walk, the Jewish Community Center, and fundraising for the local fire department. The witnesses presented by Petitioner were credible and convincing as to Petitioner's remorse and rehabilitation. Each of them remarked that the misconduct was an aberration and out of character for Petitioner. The remorse expressed to these witnesses by Petitioner was unsolicited and occurred during chance meetings at temple or community activities and family gatherings. Several witnesses testified directly that they would trust Petitioner with their own money and that of their family. No one expressed reservations about granting reinstatement to Petitioner.

Petitioner found work as a paralegal during his disbarment. He worked initially for Attorney Irwin Schneider and subsequently for Attorney John Spall. Petitioner hopes to continue working with Mr. Spall in the future. Petitioner fulfilled his Continuing Legal Education credits and has kept up to date on the law by reading advance sheets and legal journals. He has kept as close as possible to the legal profession without practicing law.

Petitioner expressed sincere remorse and acceptance of responsibility for his acts of misconduct. He fully understands the grief he caused his family and the embarrassment he brought upon his firm and the legal community.

Considering all of these facts, the Board is persuaded that Petitioner has demonstrated that he has engaged in a qualitative period of rehabilitation during his disbarment. Petitioner has met his burden of proving that he has the moral qualifications, learning in the law and competence to practice law and his resumption of the practice of law will not have a detrimental impact on the integrity and standing of the bar, the administration of justice or the public interest.

The Board recommends that the Petition for Reinstatement be granted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Petitioner, Joseph Robert Rydzewski, be reinstated to the practice of law.

The Board further recommends that, pursuant to Rule 218(e), Pa.R.D.E., Petitioner be directed to pay the necessary expenses incurred in the investigation and processing of the Petition for Reinstatement.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Donald E. Wright, Member

Date: December 3, 2003

Board Member Rudnitsky did not participate in the adjudication of this matter.

PER CURIAM:

AND NOW, this 30th day of March, 2004, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated December 3, 2003, the Petition for Reinstatement is GRANTED.

Pursuant to Rule 218(e), Pa.R.D.E., petitioner is directed to pay the expenses incurred by the Board in the investigation and processing of the Petition for Reinstatement.

Mr. Justice Baer dissents.